O Hay/52

1952. **File No.** 8/52

Legal Deptt

G **BRANCH**

Subject:— Opinion under the Bombay Hay (Control) Order, 1951

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(Pt. I, II & III to contain papers together in this file)

O/Hay/52

File No. 8/52

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C O N T E N T S

Legal Department File No. C. May/1952

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3	G-95 1/3/52	Question whether permit would be necessary for export of hay from Broach Dist. on behalf of the Saurashtra Govt. both under the B.H.(C) Order, 1951, and Cattle fodder (Control) Order, 1951.	7-8
4	G-186 1/5/52	Question re: insertion of Clause 9A in the draft agreement to be executed by contractors with a view to recover excessive ~~shortages~~ shortages	9-14
5	G-191 5/5/52	Question whether prosecution would be against M/S. Ramanlal Somalal & Co. for not complying with the order issued by Govt. under Sec. 3 of the E.S.(T.P.). Act, 1946.	15-16
6	G-198 13/5/52	Question whether assignment of business with benefits of the licence of the firm M/S. Haji Ismail Karim & Co., by Mrs Aishabai the widow of the deceased Haji Ismail Karim and his partner Shri Umar Mahomed to Shri Keshavlal and Shri Chandulal Hirachand Jivraj is perfectly valid in law ~~law~~ as contended by the Solicitors of Shri Chandulal.	17-18
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10	C-348 31/7/52	An amount of Rs. 970/- withheld by Govt. from the bills to be paid to Shri Bhagaji Jasaji Shah, holder of a hay dealers licence for hay supplied by him to scarcity areas - Draft letter to be sent to the hay dealer	37-40
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12	C-426 5/9/52	Question whether Shri Gokarenprasad could be sucessfully prosecuted for any breach of the H.H.(C) Order 1951, if, as a member of a joint family; he could trade on his brother's licence	43-44
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C O N T E N T S

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17	G-561 25/10/52	Question whether it is legally feasible to take an undertaking from a licensee who wants to leave his business with the permission of the licensing authority to the effect that the deposit paid by him would be liable to be forefeited by the licensing authority for any breach of the order and of any conditions of the licence committed by the transferee.	61-64
18	G-624 15/11/52	Question whether Shri Gokarnprasad Kalicharan Tiwari can be successfully prosecuted for having traded without a licence for a period from 16-1-52 till the first week of June 1952 in contravention of the provisions of Cl.11(iv) of the Bombay Hay (C). Order, 1951. (2) if not, whether Shri Gokarnprasad can be prosecuted for any breach of Control Order that he may have committed.	65-70
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C O N T E N T S

Sr. No.	R.I./O.No.	Subject	Pages.
21	G-637 22/11/52	Question whether when the business conducted under the existing licence, is a joint family business, there is any objection to enter the names of the other two brothers in the licence	81-82
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23	G-594 15/12/52	Question whether any person can export hay from Poona Dist except under a permit from the Dist. Magistrate and whether cl. 3 applies to all persons irrespective of the fact whether they are agriculturists or not	85-86
24	G-723 29/12/52	Charges against Shri Badriprasad Ramsundar Tiwari— Prosecution unier Sec. 193, IPC.	87-92
25	G-3120 4/3/52	Question whether there is any legal objection to release the balance of about 14 lac. lbs. of hay.	93-94
26	G-273 25/6/52	Question re: the issue of an order cancelling the sale order so far as it relates to the balance stock not purchased.	95-96
27	G-424 5/9/52	Question whether it would be legally feasible to hold Shri Khandge responsible for the shortage found at the destination in the hay bales supplied by him.	97-98
28	G-161 18/9/52	Scrutiny of draft letter to Shri Khandge. (copies not made)	99-104

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C O N T E N T S

Sr. No.	R.I./G.No.	Subject	Pages.
29	G-481 23/9/52	Question whether there is any objection to supply a copy of the order to Shri Khandege. (copies not made)	105-108
30	G-563 25/10/52	Scrutiny of draft letter to Shri Khandege (copies not made)	109-112
31	G-590 5/11/52	----------do----------	113-114
32	G-680 9/12/52	Question whether there is any legal objection to payment of bills signed under protest by receivers	115-116

5 c.
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Office of the R.I.A.

No prosecution under clauses 10(i) and (ii) of the Bombay Hay Control Order would lie in this case as no direction was issued thereunder by the Director of Civil Supplies (Bombay). One particular instance of sale would not make a person a dealer unless continuity in trade is established. Prosecution under clause 11(iv) and 5 would not thereof lie in respect of this single instance of sale. A prosecution does not appear feasible in this case.

The bundles of hay may be returned to the person from whom they were attached.

O/C Sd/-6/1

Remembrancer of Legal Affairs.

U.R. to C.S.D. No. G-27, dated the 17th January 1952.

4 c.
V.R.K.
17/7/56

Office of the R.L.A.

The question for R.L.A.'s consideration is whether the following four persons should be prosecuted for contravention of clause 22(2) of the Bombay Hay (Control) Order 1951, for receiving hay in Greater Bombay and scheduled villages on the dates specified against their names:-

i)	Messrs Godrej and Boyce Manufacturing Co.	24th August 1951
ii)	Shri Baleswar Singh	27th, 29th, 30th and 31st August 1951
iii)	Shri Jairaj Singh	29th August 1951
iv)	Shri Deepnarain Singh	31st August 1951

The fouth consignee, Shri Deepnarian Singh has informed the Director of Civil Supplies (Fuel and Fodder), that he has not received the wagon of rice straw stated to have been receive by him. Unless there is evidence to prove that he did receive the wagon no prosection would lie against him.

As regards Messrs. Godrej and Boyce, the wagons were received on the 24th August 1951 i.e. on the date on which the Bombay Hay (Control) Order, 1951 was published in the Government Gazette and therefore knowledge of the order cannot be imputed to them. The breach is therefore technical and the court is not likely to convict them for the breach on the ground that although the order come into force on its publication, sufficient time should elapse in order to enable the party to know about the order.

As regards No. 2 his contention is that the orders for these wagons were placed long before the Bombay Hay (Control) Order, 1951, came into force and therefore the receipt of these wagons would not bring him within the purview of the said order. His stand is not correct as clause 22(2) applies to hay received in Greater Bombay after the coming into force of the Order. No. 3 also similarly contends that the sauda was settled prior to the order. But he admits that he came to know about the order when the wagons were received. In these cases the court is likely to hold that they made an honest mistake in believing that the order did not apply to hay received in Greater Bombay after the

order came into force and for which orders were placed prior to the order and in some cases despatched from Thana and Surat prior to that date. The offences may therefore be treated as technical.

O/C Sd/-
1/2

Remembrancer of Legal Affairs.

U.R. to C.S.D. No.G-45, dated the 4th February 1952.

4 c.
V.R.K.
17/7/56

Office of the R.L.A.

The word 'Government' has been defined in section 3(23) of the General Clauses Act, 1897 as including both the Central Government and any State Government. Although this definition in terms applies to Central enactments only, the word 'Government' in the Bombay Hay (Control) Order, 1951 will have to be interpreted in the same way at least for administrative purposes when it occurs in any orders issued under a Central enactment. (Compare the provisions of the Cattle Fodder (Movement Control) Order, 1951). No permit would therefore be necessary for export of hay from Broach district on behalf of the Saurashtra Government both under the Bombay Hay (Control) Order, 1951 and the Cattle Fodder (Movement Control) Order, 1951.

O/C. Bdy-
29/2

Remembrancer of Legal Affairs.

U.R. to C.S.D. No. G-95, dated the 1st March 1952.

4 c
V.R.K.
17/7/56

Office of the R.I.A.

There appears no objection to incorporate the proposed condition, but it should be in the following terms:-

"9A. Shortages in the weight of each consignment of hay reported by the consignee officers in excess of 3% of the total weight of ~~xxxx~~ consignment and ~~xx~~ supported by a panchnama shall be made good by the contractor except when he is able to establish that such shortage occurred during transit after the bales were loaded in wagons."

OC. Sd/-
1/5

Remembrancer of Legal Affairs.

U.R. to C.S.D. No. G-186, dated 1st May 1952.

4 ~~x~~.
V.R.K.
17/7/56

Office of the R.L.A.

Prosecution would lie against Messrs. Ramanlal Somalal and Company i.e. against its proprietor or partners as the case may be, for not complying with the order issued by Government under section 3 of the Essential Supplies (Temporary Powers) Act, 1946, namely Revenue Department Order No. 8423/49-IV(b)-H, dated the 27th June 1951.

It does bot appear that a civil suit would lie for the recovery of Rs. 209-8-0 which Government had to pay as registration fee and demurrage charges in respect of wagons which were indented because Ramalal and Company offered to deliver 5 wagons ~~for~~/day as per the above Government release order which was for delivery F.O.R. Tulegaon and not ex-godown of storage. The wagons were presumably indented on the same day and it is said that the wagons arrived on the 29th July 1951. The statement made on the 9th July 1951 by the said Company along with other merchants cannot absolve them of their responsibility for the loss caused by their previous statement if it was actionable. But the previous statement cannot be treated as an agreement and therefore there is no breach of any contract. The statement of the Company was merely made to inform Government that they were prepared to comply with the statutory order; and if they did not comply then a prosecution would lie but there is no civil remedy.

O/C. Sd/-
3/5

Remembrancer of Legal Affairs.

U.R. to R.D. No. G-191, dated the 5th May 1952.

4 c.
V.R.K.
17/7/56

Office of the R.L.A.

The Bombay Hay Trade Licensing Order, 1944 did not contain an analogous provision on the lines of clause 16 of the Bombay Hay (Control) Order, 1951, precluding transfer of licence already granted to any person or persons. The business of Haji Ismail Karim was assigned to Messrs. Keshavlal Hirachand and Chandulal Jivraj on the 12th December 1949 that is when the Bombay Hay Trade Licensing Order, 1944, was in operation. There was, therefore, no breach of any provision of that Order when the licence was transferred to the assignees. The benefit of the licence which was in the name of the firm could be legally assigned together with the firm's business and goodwill. Since the transfer Messrs. Chandulal and Keshavlal have presumably applied for the renewal of the licence in the name of Haji Ismail and Company and their Solicitors allege that the licence had been renewed for the years 1950 and 1951. If as stated by the Solicitors of Messrs. Keshavlal and Chandulal, they were carrying on the business as hay retailer continuously for the yrars 1950 and 1951 and if this fact is proved a fresh licence may be issued under clause 12(ii)(a) of the Bombay Hay (Control) Order 1951.

O/Cm Sd/-
13/5

Remembrancer of Legal Affairs.

U.R. to C.S.D. No. G-198, dated the 13 May 1952.

4 c.
V.R.K.
18/7/56

Office of the R.L.A.

Under clause 18 of the Bombay Hay (Control) Order 1951, the deposit of the licensee can be forfeited for the breach of any of the conditions of the licence. The deposit of the licensee cannot be forfeited under that provision for the breach of any of the conditions committed by the licensee's agent or servant during the licensee's absence; for, there is no provision in the Order for such vicarious liability. It would not therefore be legally in order to take an undertaking from the licensee in terms of the draft at page 21 as proposed by by the Civil Supplies Department.»

The best course to get over the difficulty would be to amend the Bombay Hay (Control) Order, 1951 so as to provide that if the holder of a licence has to leave the local area in which his license is operative for any reasonable or unavoidable cause, then he may apply to the Licensing Authority for permission to entrust the carrying on of his business to his Manager, servant or any other person to be named by him in such application and on permission being granted by the Licensing Authority the Manager, servant or any other person so entrusted shall be deemed to be the holder of license of the period mentioned in the said permission and all the provisions of the Order which apply to the holder of a license shall apply to him. The Civil Supplies Department may consider making provision in the order on the above lines.

O/C Sd/-
30/6

Remembrancer of Legal Affairs

U.R. to C.S.D. No. G-291, dated the 30th June 1952.

4 c.
V.R.K.
18/7/56

Office of the R.L.A.

The draft letter proposed to be sent ot the Hay dealer is not in order. The Civil Supplies Department Circular No. 1025/III-(Hay), dated the 20th November 1948 contained a direction issued to the dealer under condition 4 of the Hay dealers licence directing him to keep in stock ~~xxxx

Office of the R.L.A.

R.L.A.'s advice is sought on the following two points.

(i) Whether prosecution under clause 4 of the Bombay Hay (Control) Order, 1951 would lie against Shri Somabhai Karsanbhai for selling Hay at Rs. 43-5-4 per 1,000 lbs; and

(ii) Whether Messrs. Adarsha Dugdhalaya, Kevdi Taluka can be prosecuted for breach of clause 3 of the Bombay Hay (Control) Order, 1951 for despatching hay from Kevdi to Sayan without an export permit or their licence suspended for breach of the order.

Question No. 1:- If sufficient evidence is available there is no objection to launch a prosecution against Shri Somabhai for breach of clause 4 of the Bombay Hay (Control) Order, 1951. the controlled price of hay per 1,000 lbs. is Rs. 39/- for Surat District as per Government Order, Civil Supplies Department, No. 34/Hay(c), dated the 21st August 1951. The price of Rs. 42/- fixed by Government by means of a press note cannot be said to be statutorily fixed as no Notification in respect thereof has been published in the Official Gazette as required by calnse 4 (Pl. see R.L.A.'s No. G-220, dated 22-5-52 as to why such Notification was not issued.). Besides this rate charged by Shri Somabhai is higher than this rate of Rs. 42/- also.

Question No. 2:- Clause 3 of the said order prohibits export of hay from any place in any local area in which this clause has been brought into force to any place outside such local area. This clause is brought into force in Surat District and therefore the local area would be considered to be the whole district. Export outside the District is banned but as Kevdi and Sayan are presumably both in the Surat District no breach of clause 3 has occured in this case. No action either departmental or by way of prosecution would lie.

O/C Sd/- 4/8

Remembrancer of Legal Affairs.

U.R. to C.S.D. No. G-364, dated the 4th August 1952.

4.c V.R.K. 18/7/56

Office of the R.L.A.

The question now referred to the R.L.A. for opinion is whether Shri Gokarampresad could be successfully prosecuted for any breach of the Bombay Hay (Control) Order, 1951, if, as a member of a joint family, he could trade on his brother's licence.

The question is hypothetical and too general for an opinion to be given at this stage. It is hypothetical because it appears from the letter of Shri Gokarmprasad dated the 21st April 1952 addressed to the Director of Civil Supplies (p. 13 ante) that Shri Gokarmparsad does not now intend to carry on business in his brother's name but intends to carry on business in his own name. It is general because the particular breach in respect of which opinion is invited has not been specified. The provisions of the Bombay Hay (Control) Order, 1951, impose different types of obligations and provide for different kinds of breaches. It is not possible to cover every such obligation and every such breach in the same opinion without definite facts relating to the obligation and the breach.

O/C 5/9 Sd/-

Remembrancer of Legal Affairs.

U.R. to C.S.D. No. G-426, dated the 5th September 1952.

4 c.
V.R.K.
18/7/56

Office of the R.L.A.

The question for R.L.A's consideration is whether prosecution would lie against Shri Lallubhai Bhikhabhai a Hay Producer's licensee for breach of the direction issued under clause 19 of the Bombay Hay (Control) Order, 1951, to him for supplying hay to scarcity areas.

In his application for Hay Producer's licence, in Form C Shri Lallubhai declared that he held stock 'nil' and that he expected to send the quantity per fortnight from November 1951 from 20,000 to 30,000 lbs. On the 20th November 1951 he informed the Civil Supplies Department that he would not require any wagons and the Western Railway should be advised to cancel the priority if it had already been granted. His letter at p.3A informing the Civil Supplies Department to cancel his licence as he had no stock was first dated the 11th December 1951 but later on that date was struck off in in ink and the date 18th February 1952 was put. All these circumstances support his statement now made in his letter dated the 14th July 1952 that from the very beginning he had no stock. He applied for a producer's licence because he intended to deal in hay and purchase land for cutting grass but he did not do so and therefore asked for cancellation of the licence. The Civil Supplies Department has also stated that there is nothing on their record to indicate that the licensee had hay in stock at either Udwada or Vapi when the direction was issued to him. In view of these circumstances no prosecution can lie against him.

O/C Sd/-
16/9

Remembrancer of Legal Affairs.

U.R. to C.S.D. No. G-454, dated the 17th September 1952.

4 c.
V.R.K.
18/7/56

Office of the R.L.A.

It seems Shri Karnik is the holder of a hay commission agent's licence. Clause 6 of the Bombay Hay (Control) Order, 1951 provides that no hay commission agent shall refuse to sell hay without reasonable cause. The hay imported by Shri Karnik on the 8th May 1952 could not be sold by him at the Yard on the same day even though cattle owners were present there to purchase it as according to him he got the intimation about the arrival of the wagon late in the evening on that day. Next day he went to the Yard with the office bearers of the National Milk Producer's Co-operative Society and told the Hay Inspector that he had decided to sell the whole stock to the Society. It seems the Inspector then told him that some cattle owners were waiting since the previous day and that they should be given preference. Shri Karnik wanted to give the whole wagon to the Society but on being pursuaded by the Hay Inspector he sold 26 bales to the cattle owners who were waiting since the previous day and 18 bales to the Society. There does not appear to be any legal obligation on the persons holding a hay commission agents license to sell hay to persons who wait at the Yard. He was within his right even if he had sold the whole wagon to the society. He did sell 26 bales to the cattle owners and it cannot be said that he has refused to sell hay without reasonable cause. It seems he had previously arranged to sell to the Society the whole wagon and there was nothing objectionable in that course and this will be construed by the Courts as reasonable cause for refusing to sell it to persons who were waiting at the Yard when first he was told to do so by the Hay Inspector. No prosecution would therefore lie against Shri Karnik for breach of clause 6 of the Bombay Hay (Control) Order, 1951.

O/C Sd/- 23/9

Remembrancer of Legal Affairs.

U.R. to C.S.D. No. G-484, dated the 26th September 1952.
4 c. V.R.K. 18/7/56

Office of the R.L.A.

The object which the Civil Supplies Department has in view is to emble the licensing Authority to forfeit the deposit made by a licensee under clause 18 of the Bombay Hay (Control) Order, 1951 for the breach of any of the conditions of the licence by the licensee's agent or servant committeed during the ~~xxxxxxxx~~ licensee's absence. It is held in Emperor v. ISAC SOLOMAN MACHULL I L R (1948) Bom. 329 in connection with an offense under the Essential Supplies (Temporary Powers) Act, 1946 that where the Statute does not either clearly or by necessary implication rule out mens rea as a constituent part of a crime, the accused should not be found guilty of an offence against the criminal law unless he has got a guilty mind. The Essential Supplies(Temporary Powers) Act, 1946, does not impose vicarious liability except in the circumstances mentioned in section 9 of the Act. In view of this provis on of law it is necessary to provide in clauses 4, 5, and 6 of the Bombay Hay (Control) Order, 1951, that not only a hay commission agent, hay producer or a hay retailer shall refrain from doing the acts specified therein, but that a servant or an employee of such hay commission agent, hay producer or hay retailer, as the case may be or the person in charge of the business of such licensee, shall refrain from doing the acts specified therein. If clauses 4, 5 and 6 are amended on the above lines, it will be possible to provide in clause (18(ii) that the licensing Authority may forfeit a part of whole of the amount of deposit for the breach of any of the provisions of this order or of the conditions of the licence either by the licensee himself or by his employee or the person in charge of the business.

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Clause 23 also will have to be amended by providing that the act prohibited in that clause shall not also be done by a servant or an employee of the holder of a hay commission agent's licence, hay producer's licence or hay retailer's licence or by the person in charge of the business of such licensee. If the order is amended as above the servant or employee of the licensee as well as the licensee, if present in the premises, can be prosecuted for the contravention of this clause of the order alleged to have been committed by them.

O/C 8d/-
23/10

Remembrancer of Legal Affairs.

U.R. to C.S.D. No. G-561, dated the 25th October 1952.-

4 c.
V.R.K.
18/7/56

Office of the R.L.A.

The questions for R.L.A.'s opinion are-

(1) whether Shri Gokarnprasad Kalicharan Tiwari can be prosecuted sucessfully for having traded without a licence for a period from 16th January 1952 till the first week of June 1952 in contravention of the provisions of clause 11(iv) of the Bombay Hay (Control) Order, 1951.

(2) if not, whether Shri Gokarnprasad can be prosecuted for any breach of Control Order that he may have committed.

A Hay Retailers licence was granted in the name of Shri Shambhudayal Kalicharan Tiwari. On inquiries the Licensing Authority came to know that the application for the licence was signed by Gokarnprasad who was the brother of Shambhudyal and at that time the papers were referred for R.L.A.'s opinion on the question whether Gokarnparasad could be prsecuted for forgery under section 465 Indian Penal Code or for cheating under section 420 Indian Penal Code or for furnishing false information under section 10 of the Essential Supplies (Temporary Powers) Act, 1946, and R.L.A. under his U.R. to C.S.D. No. G-178, dated the 30th April 1952 advised that Gokarnprasad to contend that he applied in the name of the joint family firm, and in view of this possibility it was difficult to establish any fraudulent or dishonest intention which was an essential ingredient of an offence under section 465or 420 Indian Penal Code. He further adivsed that for the same reason prosecution under section 10 would also not succeed and Gokarnprasad could contend that he did not furnish any false information when he applied for a licence in the name of the joint family firm.

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Thereafter Gokarnprasad applied for a licence in his own name and in his letter dated the 21st April 1952 he stated that he was carrying on business of hay in his brother's name Shambhudayal Kalicharan Tiwari. The Civil Supplies Department refused to grant him a licence. It seems Gokarnprasad carries on the business of hay in the absence of his brother from Bombay and even though his brother is in Bombay both of them carry on business in Bombay. The Inspector of the Hay Section has recorded in his inspection notes the fact that the licensee has a joint family at their native place where all these brothers live together. His inquiries reveal that Gokarnprasad is mostly residing in Bombay and carries on business in Bombay and Shambhudyal resides at his native place and manages the household affairs. In view of all these facts it would not be possible to prosecute Gokarnprasad for doing business of hay retailer without a licence. The licence granted is in the name of his brother who is perhaps the head of the family, and there is nothing in the Bombay Hay (Control) Order to show that a business cannot be carried on by the licensee through his agent or mansger or a servant. In view of this the Court is likely to hold that Gokarnprasad was doing business in Bombay as the agent of the licensee during his absence or as his manager and not as the licensee himself. Alternatively, if the license is held to be in the name of the joint family firm, he would be considered as entitled to carry on business on the licence issued in the name of the firm.

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As regards the second question, if the licence is held to be in his brother's name Gokarnprasad himself not being a licensee cannot be prosecuted for the breach for which a licensee is made liable under the Bombay Hay (Control) Order; but he can be prosecuted for such contraventions if the licence is treated as being in the name of the joint family firm.

In such circumstances, both the defences being open to Shri Gokarnprasad it would be advisable to get the matter regularised by getting his name entered in the licence along with his brother so that he can be held responsible as a licensee for the breaches of the provisions of the order.

O/c Sd/-
14/11

Remembrancer of Legal Affairs.

U.R. to C.S.D. No. G-624, dated the 15th November 1952.

4 c.
V.R.K.
18/7/56

Office of the R.L.A.

The question for consideration is whether Shri Dandekar the holder of a Hay Producer's Licence could be prosecuted for failing to supply 30,000 lbs, of hay to scarcity area and 1 wagon of hay to scarcity area in Mehasana District.

The Civil Supplies Department was asked to send copies of the directions issued under clause 19 of the Bombay Hay (Control) Order, 1951 in respect of the supply of 30,000 lbs. and 1 wagon respectively. The Civil Supplies Department has now stated that no such direction was issued and the only documents which may be considered in this case are the letter at page 3 addressed to Shri Dandekar by the Director of Civil Supplies (Fuel and Fodder) and the memo dated 14th April 1952 at page 39 addressed by the Director of Civil Supplies (Fuel and Fodder) to the Hay Inspector, Palghar, Boisar, Vangaon. In the first letter at page 3 dated the 8th November 1951 the Hay producer was informed that a temporary Hay Producer's Licence was granted to him on the distinct understanding that he should deliver to scarcity areas 2,70,000 lbs. i.e. 34 wagons of hay calculated on the basis of average stock of hay declared by him. This letter cannot be construed either as a direction issued under clause 19 of the order or as part of the programme communicated to him by the Licensing Authority under condition 4 of his licence in Form G. It is obvious that the programme which is to be communicated to the licensee under condition 4 is in respect of supply of hay to be received in the grass yard in the Greater Bombay and Scheduled villages. There is no reference in this condition for the supply of hay to the scarcity areas and therefore this condition is not applicable to the present case. The Licensing Authority is empowered under clause 19(ii) to issue directions regarding storage, sale, transport and accounting of hay to any Hay Producer.

4 pls V.R.K. 18/7/56

There is no mention of clause 19 in the letter dated 8th November 1951. On the contrary it is stated in that letter that a temporary Hay Producer's Licence is granted to Shri Dandekar on the distinct understanding that he should deliver a particular quantity of hay to scarcity areas. The grant of a licence under clause 11(3) cannot be made conditional except as provided in Form G. It would not also be possible to argue that this is a direction under clause 19. So also the memo to the hay Inspector dated the 14th April 1952 at page 19 cannot be said to be a direction as it was not addressed to the Producer but addressed to the Hay Inspector who is an officer of Government. In the circumstances the prosecution of the Hay Producer does not appear to be feasible and taking departmental action if at all action is to be taken may be considered.

O/C Sd/-
17/11

Remembrancer of Legal Affairs.

U.R. to C.S.D. No. G-828, dated the 18th November 1952.

4 c.
V.R.K.
18/7/56

Office of the R.L.,

If the XCivil Supplies Department is satisfied that the business that is conducted under the existing licence, is a joint family business, then there is no objection to enter the names of the other two brothers in the licence.

O/C Sd/-
21/11

Remembrancer of Legal Affairs.

U.R. to C.S.D. No. G-637, dated the 22nd November 1952.

4 c.
V.R.K.
18/7/56

Office of the R.L.A.

The question for R.L.A's consideration is whether Shri Thakur, the holder of Hay Producers' Licence No. G.500 and Shri Shroff, the holder of Hay Producers' Licence No. G.559, could be prosecuted for breach of the direction issued by the Licensing Authority under clause 9 of the Bombay Hay (Control) Order, 1951, directing Hay Producers' Licensees not to sell or supply the stock of hay held by him to any person in Thana and Surat districts except under a and in accordance with the conditions of a permit issued by the Director of Civil Supplies (Fuel and Fodder), Bombay, in that behalf.

The direction issued to the Hay Producers' Licensee is at page 45 ante. From this it is clear that only the person who sells can be prosecuted and not the person who obtains and therefore, there is no question of prosecuting Shri Thakur.

The successful prosecution of Shri Shroff will depend on the question whether he really sold 15 lakh lbs. of hay to Shri Thakur. On the fact of sale the evidence is meagre. The written statements of Shri Thakur and Shri Shroff of 20th March 1952 (pp. 9and 11 ante) no doubt go to show that there was a sale by Shri Shroff to Shri Thakur. But Shri Thakur who will have to be examined as a witness in support of that statement will not, it appears, stick to it; for, in a subsequent statement he has gone back on it and stated that he purchased the hay from other persons and Shri Shroff only stood surety. Shri Shroff's statement can no doubt be relied on against him. But that statement would not be enough in the absence of any independent evidence to that effect and particularly when the stock position declared by Shri Shroff has not been affected by the so-called sale. In these circumstances, a prosecution is not advisable in this case.

4 .c O/C Sd/- 28/11
V.R.K. 18/7/56 Remembrancer of Legal Affairs.
U.R. to C.S.D. No. G-654, dated the 28th November 1952.

Office of the R.L.A.

The view taken by the Civil Supplies Department that under clause 3 of the Bombay Hay (Control) Order 1951 which is extended to Poona District no person can export hay from Poona Dist. except under a permit from the District Magistrate, Poona and that this clause applies to all persons respective of the fact whether they are agriculturists not, is correct and Shri Lomate may be informed accordingly. He may also be informed that at present there is no price control on hay in Greater Bombay, as suggested by the Civil Supplies Department.

O/C Sd/-
15/12

Remembrancer of Legal Affairs.

U.R. to C.S.D. No. G-694, dated the 15th December 1952.

54 c.
V.R.K.
18/7/56

Office of the R.L.A

I do not think that the sale order dated 9th November 1951 issued under clause 10 of the Bombay Hay Control Order, 1951 can be said to cancel the freezing order dated 23rd June 1951 issued by the Revenue Department both can exist together. In that view, the freezing order will have to be cancelled if part of the stock is now to be released. The freezing order was issued by the Revenue Department under the delegated authority under section 3 of the Essential Supplies (Temporary Powers) Act and as that delegated authority is now exhausted, the Government of India will have to be moved to cancel that order. The sale order issued by this Government will have also to be cancelled in respect of the part of the stock which is now proposed to be released.

If Civil Supplies Department is in a position to prove that the action taken by Government and its officers all along in this case is taken in good faith, no suit would lie in xx view of the provisions of section 16 of the Essential Supplies(Temporary Powers) Act, 1946.

O/C. Sd/-
4/3

Remembrancer of Legal Affairs.

U.R. to C.S.D. No. 3520, dated the 4th March 1952.

4 c.
V.R.K.
18/7/56

Office of the R.L.A.

The draft letterxx to the Government of India at page 202 ante is in order.

The view taken by the Director of Civil Supplies (Fuel and Fodder) in his note at page 201 ante that there is no need of amending the order at page 77 is not correct. As stated by the R.L.A. in his opinion No. 3520, dated the 4th March 1952 both the orders ~~x~~ viz., the freezing order issued by ~~the Civil Supplies~~ the Revenue Department and the sale order issued by the Civil Supplies Department would exist side by side and the cancellation of the freezing order by the Government of India would not effect the cancellation of the order of this Government directing Shri Khandge to sell 30 lacs of lbs. of hay to Government in so far as it relates to the stock not yet purchased by Government. An order cancelling the sale order at page 77 in so far as it relates to the balance stock not purchased will have therefore to be issued.

O/C Sd/-
23/6

Remembrancer of Legal Affairs.

U.R. to C.S.D. No. G-273, dated the 25th June 1952.

4 c.
V.R.K.
18/7/56

Office of the R.L.A.

In view of the statement of the Hay Inspector at Talegaon at p. 17/ante, it is not legally feasible to hold Shri Khandge responsible for the shortage found at the destination in the hay bales supplied by him. The Inspector at Talegaon had weighed the hay and he attributes shortage to the difference in spring balances, exposure to sun and loss in transit and transhipment.

Regarding hay of bad quality, it is not clear x what the hay Inspector at Talegaon has to say in the matter. If the hay was not inspected at Talegaon for its quality the statements of the officers at the destinatio will have to be accepted and if it can be proved that deterioration did not set in during transit Shri Khandge would be liable in damages and the amount of the loss can be deducted from his bills.

O/C Sd/-
5/9

Remembrancer of Legal Affairs.

U.R. to C.S.D. No. G-424, dated the 5th September 1952.

4 c.
V.R.K.
18/7/56

Office of the P.L.A.

There is no legal objection to payment of bills signed under protest by the receivers. The receipts signed 'under protest' would however give them an opportunity to agitate their claims for the balance in a court of law where they can plead that they had not signed the receipt in full satisfaction of their claims.

O/C Sd/-
9/12

Remembrancer of Legal Affairs.

U.R. to C.S.D. No. G-680, dated the 9th December 1952.

4 c.
V.R.K.
18/7/56